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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,176	10/30/2003	Richard J. Lanigan	1062/D73	8157
73544	7590	02/06/2008	EXAMINER	
Michelle Saquet Temple DEKA Research & Development Corporation 340 Commercial Street Manchester, NH 03101-1129			DWIVEDI, VIKANSHA S	
			ART UNIT	PAPER NUMBER
			3746	
			MAIL DATE	DELIVERY MODE
			02/06/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/697,176	LANIGAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	VIKANSHA S. DWIVEDI	3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 November 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14, 22-27 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 and 22-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 2-7, 9, 10, 12, 13, 14, 21 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. the specification, while being enabling for force assembly, movable member and membrane, does not reasonably provide enablement for the same. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, Specification does not provide information on the force assembly as being a movable member capable of applying force to the pump cassette, to press the pump cassette against the control assembly but does not make very clear what part or parts of the invention it pertains to, similarly a movable member is described as a member positioned between the back plate and the frame but is not shown in the drawings, the invention commensurate in scope with these claims. With regard to the membrane it is disclosed that bezel gasket 612 includes membranes that correspond to the chamber cavities and valve cavities, chamber

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cavities are clear but it is not clear what the valve cavities are. Applicant has cited numerous passages from the detailed description but none of them provide definitive description of the control assembly, force assembly, valve cavities etc. It is still not clear what parts/structure is called to be a control assembly (force assembly, valve cavities etc.) by the applicant. It is advised that the applicant.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8-11, 21-24, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by DeMeo et al (U.S. Patent number 4,798,580).

DeMeo discloses a system for pumping fluid using a pump cassette (50), the system comprising: a control assembly (latch, latch supports, cam bar etc. as seen in figure 8) for pneumatically (Col. 1 ll. 8-33) operating the pump cassette, and a force assembly (roller, tubing assembly) having a movable member (roller/tubing) capable of applying force to the pump cassette to sealingly press the pump cassette against the control assembly (figure 8); wherein the movable member (roller/tubing) includes an expandable member (tubing) capable of expanding to press the pump cassette against the control assembly; wherein the expandable member is a bladder (tubing is a bladder (bodily sac for liquid or gas)); wherein the force assembly includes a door (52), the

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movable member (roller) attached to the door; wherein the force assembly includes a back plate and a frame, the movable member positioned between the back plate and the frame (seen in figure 7); further including a cassette receptacle (20b and 70b) for receiving the pump cassette (50); wherein the force assembly is movably coupled to the control assembly to allow access to the cassette receptacle (figure 7 and 8); wherein the cassette receptacle (20b and 70b) is movably coupled to the force assembly 9figure 8).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DeMeo et al (U.S. Patent number 4,798,580). In the summary of invention DeMeo discloses commonly employed surgical instruments such as electro-mechanical or pneumatically driven cutters and phacoemulsification instruments. So, at the time of invention it would have been obvious to one of ordinary skill in the art to have a pneumatic circuit for controlling the movable member as commonly known and used phenomenon in the art.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeMoe et al in view of Beuchat (5267956).

As explained above DeMoe discloses the claimed invention substantially except the teaching for a movable member being coupled to a piston. Beuchat discloses a surgical cassette wherein the pump 516 may be a reciprocating piston pump. It would have been obvious to one of ordinary skill in the art at the time of invention to modify DeMoe in view of Beuchat for the purposes of withdrawing fluid from fluid conduit and expelling the fluid through discharge line.

#### ***Response to Arguments***

Applicant's arguments filed 11/15/2007 have been fully considered but they are not persuasive. In response to applicant's argument that DeMoe and Beuchat is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, DeMoe and Beuchat teach a peristaltic pump capable of easy assembly and pumping, used for surgical purposes.

It is not required that the prior art disclose or suggest the properties newly-discovered by an applicant in order for there to be a prima facie case of obviousness. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed

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invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In this case DeMoe discloses the claimed invention substantially except the teaching for a movable member being coupled to a piston. Beuchat discloses a surgical cassette wherein the pump 516 may be a reciprocating piston pump. It would have been obvious to one of ordinary skill in the art at the time of invention to modify DeMoe in view of Beuchat for the purposes of withdrawing fluid from fluid conduit and expelling the fluid through discharge line.

Applicant is correct in the understanding that the Notice of References Cited refers to U.S. Patent No.4,789,580 (Hirsch), was a typographical due to a transposition of the numbers 8 and 9 (U.S. Patent No. 4,798,580 is the DeMoe reference relied upon by the Examiner). Hirsch is completely unrelated to the subject matter of this patent application.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIKANSHA S. DWIVEDI whose telephone number is (571)272-7834. The examiner can normally be reached on M-F, 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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*Vikesen*

VSD

DEVON C. KRAMER  
PATENT FEE

*Devon Kramar*  
2/4/06